

# **2013 DRAFTING REQUEST**

## **Bill**

Received: 11/21/2013 Received By: rnelson  
 Wanted: As time permits Same as LRB:  
 For: Chris Kapenga (608) 266-3007 By/Representing: Kyle  
 May Contact: Drafter: rnelson  
 Subject: Administrative Law Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email: Rep.Kapenga@legis.wisconsin.gov  
 Carbon copy (CC) to:

## **Pre Topic:**

No specific pre topic given

## **Topic:**

Discretion in imposing penalties for minor rule violations

## **Instructions:**

Use 13-3365 but include 895.59 (2) (d), rather than repealing that paragraph

## **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson 11/21/2013	scalvin 11/21/2013					
/1	rnelson 11/26/2013		rschluet 11/21/2013		mbarman 11/21/2013		
/2		scalvin 11/26/2013	rschluet 11/26/2013		lparisi 11/26/2013	sbasford 12/11/2013	

FE Sent For:

*None  
Needed*

<END>

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/1	rnelson 11/26/2013		rschluet 11/21/2013	_____	mbarman 11/21/2013		
/2		scalvin 11/26/2013	rschluet 11/26/2013	_____	lparisi 11/26/2013		

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11/26/13 Kyle -  
remove end of sentence, after  
comma, p 3, ls 14 & 15

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/?	rnelson 11/21/2013	scalvin 11/21/2013					
/1			rschluet 11/21/2013		mbarman 11/21/2013		
FE Sent For:	1/2 SAC 11/26/2013	1/2 SAC 11/26/2013					

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1/2	rnelson	1/1 sac 11/21/2013	1/1 sac 11/21/2013	3m			

FE Sent For:

<END>



11/21  
State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-6365/1

RPN:sac:ts

stays

Wanted  
Soon  
  
2013 BILL

gun cat

1 AN ACT *to repeal* 227.04 (2) (b), 895.59 (1) and 895.59 (2) (a) to (d); *to renumber*  
2 227.04 (2) (a), (c) and (d), 895.59 (2) (e) and 895.59 (2) (f); *to renumber and*  
3 *amend* 227.04 (2) (intro.) and 895.59 (2) (intro.); *to amend* 227.04 (1); and *to*  
4 *create* 227.04 (1) (a), 227.04 (2m) (b) and 227.04 (2m) (d) of the statutes;  
5 **relating to:** agency discretion in imposing penalties for minor violations of  
6 rules by small businesses and granting rule-making authority.

---

***Analysis by the Legislative Reference Bureau***

Under current law, public agencies are required to provide assistance to small businesses to help those small businesses comply with the rules promulgated by those agencies. Public agencies are required under current law to establish a rule that creates reduced fines and enforcement mechanisms for minor violations of agency rules by small businesses. Current law requires public agencies to consider the appropriateness of a written warning, a reduced fine, or an alternative penalty if the small business violates a rule, that small business has made a good faith effort to comply with the rule, and the minor violation does not pose a threat to public health, safety, or welfare.

In addition, under current law, each public agency is required to promulgate a rule that discloses in advance the discretion that the agency will follow in the enforcement of rules against a small business. The rule promulgated shall include a reduction or waiver of a penalty if the small business voluntarily discloses a rule

**BILL**

*to minor violations that result in a substantial economic advantage for the small business,*

violation, and may include consideration of the small business's ability to pay when determining the penalty. Current law prohibits any discretion in the enforcement of a rule if certain conditions apply, including if the agency discovers the violation first, the violation resulted in a substantial economic advantage to the small business, the small business has repeatedly violated the rule, or the violation may result in an imminent endangerment to public health or safety.

This bill continues to require public agencies to promulgate a rule that discloses in advance the discretion that the public agency will follow in the enforcement of rules against a small business that commits a minor violation of a rule, but limits the conditions when such discretion is not allowed to minor violations involving a small business that has repeatedly violated the rule and to minor violations that may result in an imminent endangerment to public health or safety.

The bill also specifies that the public agency shall consider a number of criteria for allowing discretion in the enforcement of a rule or assessment of a penalty for a minor violation, including the following:

1. The difficulty and cost to a small business of complying with a rule, compared to other businesses.
2. The financial capacity of the small business, including the ability of the small business to pay the amount of the possible penalty.
3. The compliance options available.
4. The level of public interest and concern.
5. The opportunities available to the small business to understand and comply with a rule.
6. Fairness to the small business and to others, including competitors and the public.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 227.04 (1) of the statutes is amended to read:

227.04 (1) In this section, "small;

(b) "Small business" has the meaning given in s. 227.114 (1).

**SECTION 2.** 227.04 (1) (a) of the statutes is created to read:

227.04 (1) (a) "Minor violation" means a rule violation that does not cause serious harm to the public, is committed by a small business, and the violation is not willful, the violation is not likely to be repeated, there is a history of compliance by the violator, or the small business has voluntarily disclosed the violation.

**BILL**

1           **SECTION 3.** 227.04 (2) (intro.) of the statutes is renumbered 227.04 (3) (intro.)  
2           and amended to read:

3           227.04 **(3)** (intro.) Consistent with the requirements under ~~s. 895.59 sub. (2m)~~  
4           and, to the extent possible, each agency shall do all of the following:

5           **SECTION 4.** 227.04 (2) (a), (c) and (d) of the statutes are renumbered 227.04 (3)  
6           (a), (c) and (d).

7           **SECTION 5.** 227.04 (2) (b) of the statutes is repealed.

8           **SECTION 6.** 227.04 (2m) (b) of the statutes is created to read:

9           227.04 **(2m)** (b) The rule promulgated under this subsection shall specify the  
10          situations in which the agency will allow discretion in the enforcement of a rule  
11          against a small business that has committed a minor violation. The rule shall  
12          consider the following criteria for allowing discretion in the enforcement of the rule  
13          and the assessment of a penalty, including a forfeiture, fine, or interest:

14          1. The difficulty and cost of compliance with the rule by the small business, as  
15          compared to other businesses.

16          2. The financial capacity of the small business, including the ability of the small  
17          business to pay the amount of any penalty that may be imposed.

18          3. The compliance options available, including options for achieving voluntary  
19          compliance with the rule.

20          4. The level of public interest and concern.

21          5. The opportunities available to the small business to understand and comply  
22          with the rule.

23          6. Fairness to the small business and to other persons, including competitors  
24          and the public.

25          **SECTION 7.** 227.04 (2m) (d) of the statutes is created to read:

## BILL

1 227.04 (2m) (d) A rule promulgated under this subsection applies to minor  
2 violations committed after the effective date of the rule.

3 SECTION 8. 895.59 (1) of the statutes is repealed.

4 SECTION 9. 895.59 (2) (intro.) of the statutes is renumbered 227.04 (2m) (a) and  
5 amended to read:

6 227.04 (2m) (a) Each agency shall promulgate a rule that requires the agency  
7 to disclose in advance the discretion that the agency will follow in the enforcement  
8 of rules and guidelines against a small business that has committed a minor  
9 violation. The rule promulgated under this subsection shall may include the  
10 reduction or waiver of penalties for a voluntary disclosure, by a small business, of  
11 actual or potential violations of rules or guidelines. ~~The rule promulgated under this~~  
12 ~~subsection may include the consideration of the violator's ability to pay when~~  
13 ~~determining the amount of any monetary penalty, or assessment, or surcharge.~~

14 (c) The rule promulgated under this subsection shall specify when the  
15 situations in which the agency will not allow discretion in the enforcement of a rule  
16 ~~or guideline~~ against small businesses that have committed minor violations and  
17 shall include all of the following situations in which discretion is not allowed:

18 SECTION 10. 895.59 (2) (a) to <sup>c</sup>(d) of the statutes are repealed.

19 SECTION 11. 895.59 (2) (e) of the statutes is renumbered 227.04 (2m) (c) <sup>2</sup>~~1~~.

20 SECTION 12. 895.59 (2) (f) of the statutes is renumbered 227.04 (2m) (c) <sup>3</sup>~~2~~.

21 (END)

895.59  
SEC # 895.59 (2) (d) of the  
statutes is renumbered 227.04  
(2m) (c) 1.





11/26 In  
State of Wisconsin  
2013 - 2014 LEGISLATURE



RMR

LRB-3693/2

RPN:sac: [signature]

## 2013 BILL

See p 3, 14 & 15  
LS  
2 X analysis

1 *general* **AN ACT to repeal** 227.04 (2) (b), 895.59 (1) and 895.59 (2) (a) to (c); **to renumber**  
2 227.04 (2) (a), (c) and (d), 895.59 (2) (d), 895.59 (2) (e) and 895.59 (2) (f); **to**  
3 **renumber and amend** 227.04 (2) (intro.) and 895.59 (2) (intro.); **to amend**  
4 227.04 (1); and **to create** 227.04 (1) (a), 227.04 (2m) (b) and 227.04 (2m) (d) of  
5 the statutes; **relating to:** agency discretion in imposing penalties for minor  
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(c) The rule promulgated under this subsection shall specify ~~when the~~ situations in which the agency will not allow discretion in the enforcement of a rule ~~or guideline~~ against small businesses that have committed minor violations and shall include all of the following situations in which discretion is not allowed:

**SECTION 10.** 895.59 (2) (a) to (c) of the statutes are repealed.

**SECTION 11.** 895.59 (2) (d) of the statutes is renumbered 227.04 (2m) (c) 1.

**SECTION 12.** 895.59 (2) (e) of the statutes is renumbered 227.04 (2m) (c) 2.

**SECTION 13.** 895.59 (2) (f) of the statutes is renumbered 227.04 (2m) (c) 3.

**(END)**

**Basford, Sarah**

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**From:** Koenen, Kyle  
**Sent:** Wednesday, December 11, 2013 11:22 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3693/2 Topic: Discretion in imposing penalties for minor rule violations

Please Jacket LRB -3693/2 for the ASSEMBLY.

## **Rose, Stefanie**

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**From:** Koenen, Kyle  
**Sent:** Thursday, December 19, 2013 11:56 AM  
**To:** LRB.Legal  
**Cc:** Burri, Lance  
**Subject:** LRB 3693

Senator Gudex will be running a Senate version of LRB 3693/2, so Lance Burri from his office will be contacting LRB regarding the drafting of a Senate version of the bill. Please let me know if anything further is needed. Thank you.

*Kyle Koenen*

Research Assistant  
Office of Rep. Chris Kapenga  
99<sup>th</sup> Assembly District  
220 North, State Capitol  
(608)266-3007